IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PAUL WILLIAMS, Appellant, v. DORIS RYAN and JOHN DOE RYAN, husband and wife, and the marital community comprised thereof, Defendants, and ANTONIO HOLGUIN and MARTINA HOLGUIN, and the marital community composed thereof, whose true names are Antonio Holguin and Martina Holguin, Respondents.	)	No. 62397-4-I DIVISION ONE UNPUBLISHED OPINION FILED: August 24, 2009

AGID, J.—Paul Williams appeals the trial court's order granting summary judgment quieting title in Antonio and Martina Holguin (the Holguins) to property on an adjoining lot. Williams contends that the trial court erred because the legal descriptions in both property owners' deeds established that the disputed property belonged to him, and the Holguins failed to establish that they owned the property on a

theory of boundary by acquiescence. Because the evidence raises an issue of material fact about whether there was a 10 year period of mutual recognition by both property owners that the disputed property belonged to the Holguins or their predecessors, summary judgment on the claim of boundary by acquiescence was improper. We reverse and remand.

FACTS

The Holguins and Williams own adjoining lots in Snohomish County. The Holguins own the west lot, and Williams owns the east lot. In the 1970's, both lots were owned by George and Doris Ryan as one lot measuring 100' by 300'. In 1976, the Ryans filed a property segregation application with the Snohomish County Assessor's Office, seeking to divide the property into two lots, each measuring 100' by 150'. The legal description provided with the application described a west lot and an east lot measuring 100' by 150' each.

After they submitted the application, a "correction" of the legal description was apparently requested by a title company employee and changed the legal description to include two panhandles of property across the northern boundaries of each lot. The east lot had a 20' by 150' panhandle attached to its property across the northern edge of the west property, and the west lot had a 10' by 150' detached panhandle across the northern edge of the east lot. Snohomish County used this legal description to approve the land segregation. George Ryan was apparently unaware of the change.

In 1977, Ryan applied for a zoning adjustment to allow him to build a duplex on the west lot. In his application for the adjustment, he included a drawing of the west lot

depicting the location of the duplex, its driveway and setbacks. The drawing depicts the lot measuring 100' by 150' without any indication of the panhandles. The application was granted, but the zoning order included a legal description that was consistent with the corrected property segregation description and included the panhandles. Ryan later applied for a building permit to build the duplex. Snohomish County issued the permit, which simply described the lot as 100' by 150'.

In 1991, the Ryans quitclaimed the east lot to their son Floyd Ryan.[1] The deed contained the same description that was in the property segregation, and the conveyance included the attached panhandle on the north 20' of the west lot. Floyd resided on the east lot until his property was foreclosed in 2000. Williams bought the property at the foreclosure sale in 2000. Williams' deed contained the same description that was in Floyd's quitclaim deed and included the attached panhandle property on the north 20' of the west lot.

In 2002, Williams' father, Robert Williams, contacted residents of the duplex about parking in the area north of the duplex and allegedly threatened to have cars parked there towed away. Robert Williams then had a survey done of both east and west lots, which was recorded in October 2002. That survey established that the east lot included the 20' by 150' attached panhandle on the northern part of the west lot and that the west lot included a 10' by 150' detached panhandle on the northern part of the east lot, consistent with the legal description in the deeds to Floyd and Williams.

In September 2003, the Holguins purchased the duplex from the Ryans. Their deed included the 10' by 150' detached panhandle on the northern part of the east lot.

[1] To avoid confusion, we refer to the son as "Floyd" and the father as "Ryan."

The deed also described the west lot as 150' by 80', accounting for the attached 20' by 150' panhandle belonging to the east lot. The duplex tenants continued to use the parking area north of the duplex.

In December 2003, Williams sued the Ryans and the Holguins, alleging encroachment and trespass on their panhandle property on the west lot. In April 2004, while the tenants were out of town, Williams parked two very large semitractor trailers on the parking area. The tractor trailers remained continuously parked in front of the duplex for the next four years.

The Holguins moved for summary judgment, seeking to quiet title to the disputed property based on claims of boundary by acquiescence and mistake due to scrivener's error. In July 2008, the trial court granted summary judgment for the Holguins. The court also ordered that the legal descriptions for both properties be amended to the original property description the Ryans submitted with their property segregation request in 1976, which did not include the panhandles.

DISCUSSION

We review summary judgment orders de novo and engage in the same inquiry as the trial court.[2] We will affirm a summary judgment if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[3] We construe the facts and all reasonable inferences from those facts in the light most favorable to the nonmoving party.[4]

[2] Sheikh v. Choe, 156 Wn.2d 441, 447, 128 P.3d 574 (2006).
[3] CR 56(c); Huff v. Budbill, 141 Wn.2d 1, 7, 1 P.3d 1138 (2000).
[4] Hertog v. City of Seattle, 138 Wn.2d 265, 275, 979 P.2d 400 (1999).

Williams first contends that the trial court erred by granting summary judgment on the boundary by acquiescence claim because the evidence does not establish that the disputed property was mutually recognized and acquiesced as the west lot owner's property for 10 continuous years. Establishing a boundary line under the doctrine of acquiescence and recognition requires a showing that (1) the boundary line is well defined and physically designated on the ground, (2) the adjoining landowners and their predecessors in interest—by their acts, occupancy, and improvements—manifested a mutual recognition and acceptance of the designated line as the true boundary line, and (3) the requisite mutual recognition and acquiescence of the line continued for a period of 10 years.[5] Proof of mutual recognition and acquiescence must be established by clear and convincing evidence.[6]

In support of their claim of boundary by acquiescence, the Holguins relied on the Ryans' property segregation request that did not include the panhandle property description, the legal descriptions in the Ryans' permit applications for use and construction on the west lot that did not include the panhandle property, and a letter from an attorney on behalf of Doris Ryan stating that "[t]he tenant parking strip and the fence in question have been used by the Ryans or their tenants since the duplex was constructed in the late 1970's." Martina Holguin also submitted a declaration stating that when she and her husband bought the property in September 2003, duplex tenants were using the lot and continued to use it until April 2004. That declaration also includes the following description of the property:

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[5] Lamm v. McTighe, 72 Wn.2d 587, 434 P.2d 565 (1967).

[6] Muench v. Oxley, 90 Wn.2d 637, 584 P.2d 939 (1978), overruled on other grounds by Chaplin v. Sanders, 100 Wn.2d 853, 676 P.2d 431 (1984).

> The boundaries of our property and Mr. Williams[’] are clearly marked on the ground. The 20 foot strip to the north of our property he is claiming has our yard, a fence, our driveway, and the parking area. The parking area is 10 to 12 feet by 150 feet long between our fence and the road / driveway. To the north of the parking area is the road / driveway Mr. Williams uses to access his property, which is also used by our tenants coming out of the garage on our property, and by the three neighbors to the north. The west property boundary has landscaping and fencing separating our properties.

In opposition to the summary judgment motion, Williams submitted the legal description in the property segregation approval, the legal descriptions in Floyd’s quitclaim and Williams’ deed that included the panhandle property on the west lot as belonging to the east lot, and the legal description in the Holguins’ deed that did not include the northern 20’ by 150’ panhandle area of the west lot. Williams also submitted his declaration stating, “Tenants of the defendant parcel would occasionally use the area to north of the fence as overflow parking, but they rarely did so. My family and I used that area for parking more often than the tenants used it for overflow parking.”

Williams first contends that the evidence does not establish the first element of a boundary by acquiescence claim that the boundary line is certain, well defined, and physically designated. He notes that the fence and landscaping enclosed within the fence described by the Holguins extends only 10 to 12 feet onto the disputed panhandle property, not the full 20 feet, which is the north boundary of that property. Thus, he contends that the additional property beyond the fence line that the Holguins describe as the parking area is not well defined by a boundary line.

The Holguins counter that the parking area is certain, well defined, and

designated on the ground and that Williams acknowledged the boundary of the parking area by parking his trucks there. We agree. The record is clear that both parties do not dispute the parameters of the disputed property that contain the parking area.

Williams next contends that the Holguins failed to establish the element of mutual recognition and acquiescence. He argues that the evidence only shows that the Ryans and the Holguins recognized the property as part of the west lot, but that there was no evidence of recognition and acquiescence on the part of the east lot owners.

Our courts have recognized that acquiescence has a knowledge component, and mere acquiescence in the existence of a barrier or marker between two properties is not sufficient to establish recognition that the barrier or marker is the boundary line.[7] "Acquiescence in a property line cannot be a unilateral act. It must be bilateral. Both parties must agree or acquiesce, either expressly or by implication."[8] Thus, the evidence must show more than a mere acquiescence in the existence of a barrier or marker claimed to be the boundary; it must show "a definite agreement to accept its location as the true boundary line."[9]

In Heriot v. Lewis, the court held that the evidence did not establish mutual recognition that the fence dividing the properties was the true boundary line, reiterating that "[a]cquiescence in a property line cannot be established by the unilateral acts of one party."[10] There, the evidence did not show that the adjoining property owner treated the disputed property as the other owner's or that he considered the fence to be

[7] Houplin v. Stoen, 72 Wn.2d 131, 136, 431 P.2d 998 (1967).
[8] Id. at 137.
[9] Id. (quoting Thomas v. Harlan, 27 Wn.2d 512, 178 P.2d 965 (1947)).
[10] 35 Wn. App. 496, 501, 668 P.2d 589 (1983).

the true boundary line.[11] Rather, the proof established only "'the subjective intent'" of one property owner and there was "'little or no reference to'" the acts of the adjoining owner or his knowledge that the fence was the boundary line.[12]

Here, the Holguins rely on evidence of Doris Ryan's representation to her attorney that the tenants have used the parking area since the duplex was constructed in the 1970's and Martina Holguins' declaration stating that the tenants used the parking lot when they purchased it in 2003 until Williams parked his trucks there in 2004.[13] But since the Ryans also owned the east lot until 1991, there would not have been any dispute of ownership of that property during that time. Thus, "mutual" recognition would not have been possible until the east lot had a new owner, i.e., when Floyd owned the property from 1991 to 2000. During that time, the evidence appears undisputed that both he and the Ryans treated the panhandle property as part of the west lot.[14] Thus, the evidence is sufficient to establish a mutual recognition and acquiescence that the disputed panhandle property belonged to the west lot owners, at least for the nine years Floyd owned the property.

But the evidence is less clear that this mutual recognition and acquiescence continued when Williams bought the east lot and that the required 10 year period was established. While the Holguins assert that the evidence establishes that Williams did

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[11] Id. at 500.

[12] Id. at 501.

[13] William contends that the letter from Doris Ryan's attorney is not sufficient to support the summary judgment motion because it is not a sworn statement in affidavit form. But as the Holguins point out, by failing to object to it below, Williams waives any deficiency. See Meadows v. Grant's Auto Brokers, Inc., 71 Wn.2d 874, 881, 431 P.2d 216 (1967).

[14] According to Doris Ryan, the area was used exclusively by the duplex tenants during that time, and Floyd does not dispute that he recognized that property as belonging to the Ryans.

not object to the tenants parking there until 2002, Williams' evidence appears to dispute that mutual recognition continued after he bought the property in 2000. His declaration states that tenants only parked there occasionally and that he and his family used the parking area more than the duplex tenants.

Viewed in the light most favorable to Williams, the evidence does not establish his recognition that the parking area property belonged to the west lot owners. Rather, the evidence established only his acquiescence to the existence of the parking area. As discussed above, this is insufficient to establish the element of mutual acquiescence and recognition.[15] Indeed, additional facts suggest the opposite: Williams questioned the tenants' use of that property, used the property himself, and ultimately had the property surveyed to determine the correct boundaries. What is unclear is whether he did this before the 10 year period had passed.

The Holguins contend that because William's declaration does not state when he began using the parking lot and the other evidence shows that he did not question the use of the property until 2002, acquiescence was established for a period of 11 years. But viewed in the light most favorable to Williams, this evidence does not establish that he actually acquiesced until 2002, particularly when he submitted evidence suggesting that he never did so. Thus, the evidence raises an issue of material fact about whether the Holguins established mutual recognition for 10 continuous years, a necessary element of their boundary by acquiescence claim.

Summary judgment on the claim of boundary by acquiescence was therefore improper, and we remand for trial on this limited issue. Reformation is not available as

[15] See Houplin, 72 Wn.2d at 36-37.

a remedy here even if the Holguins could establish a mutual mistake or scrivener's error. Because the deed to Floyd was not supported by any consideration other than "love and affection," the unilateral gift exception applies to bar reformation.[16]

We reverse the order on summary judgment, vacate the order amending the deed, and remand for trial on the claim of boundary by acquiescence.

Agid, J.

WE CONCUR:

Ellington, J.

Cox, J.

[16] See Snyder v. Peterson, 62 Wn. App. 522, 529, 814 P.2d 1204 (1991). But we reject Williams' claim that he was a bona fide purchaser for value and could resist reformation on that basis. Because the undisputed evidence establishes that the duplex fence and parking lot existed at the time of Williams' purchase, his knowledge of this fact would raise a duty to inquire about the ownership of this property. Thus, because he had constructive notice of another's claim to the property before acquiring title to it, he was not a bona fide purchaser for value. See Biles-Coleman Lumber Co. v. Lesamiz, 49 Wn.2d 436, 439, 302 P.2d 198 (1956) (bona fide purchaser for value pays valuable consideration for property and has no notice of another's claim to it before acquiring title).